



B-19

STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

In the Matter of M.D., Police Officer  
(S9999R), Town of Morristown

CSC Docket No. 2017-638

Acknowledgment of Settlement

ISSUED: JUN 23 2017 (DASV)

M.D., represented by Kara A. MacKenzie, Esq., and the Town of Morristown, represented by H. Thomas Clarke, Esq., petition the Civil Service Commission (Commission) for acknowledgment of the attached settlement agreement reached by the parties, which provides for M.D.'s restoration to the Police Officer (S9999R), Town of Morristown, eligible list and appointment effective July 17, 2017.

By way of background, M.D. appeared on the Police Officer (S9999R), Town of Morristown, eligible list which promulgated on May 2, 2014 and expired on March 22, 2017. M.D. was certified to the appointing authority on April 22, 2016. He was ranked seventh on the certification. In disposing of the certification, the appointing authority removed his name on the basis of psychological unfitness to perform effectively the duties of the position. It is noted that the second and fifth ranked eligibles were appointed from the certification effective July 11, 2016. The other eligibles ranked above M.D. were removed for various reasons. M.D. appealed his removal to the Commission. During the pendency of the appeal, M.D. entered into a Memorandum of Agreement with the appointing authority. The parties agreed to have M.D. re-examined by Dr. Daniel Schievella, a psychologist. Should Dr. Schievella find M.D. psychologically fit to perform the duties of a Police Officer, the appointing authority would withdraw its request to remove M.D. from the subject eligible list. Thereafter, Dr. Schievella conducted the examination and recommended M.D. for appointment.

Given the positive examination results, the parties entered into the attached Agreement. The Agreement provides for, among other things, the amendment of



the April 22, 2016 certification to reflect M.D.'s appointment from the Police Officer (S9999R), Town of Morristown, eligible list, effective July 17, 2017, the commencement date of the next police academy class. Additionally, as set forth in the Agreement, M.D. specifically waives any claim to a retroactive appointment date, back pay, and counsel fees. The Agreement is now being presented to the Commission for acknowledgement.

### CONCLUSION

*N.J.A.C.* 4A:4-3.4 states that the Commission may revive an expired eligible list under the following circumstances: 1. to implement a court order, in a suit filed prior to the expiration of the list; 2. to implement an order of the Commission in an appeal or proceeding instituted during the life of the list; 3. to correct an administrative error; 4. to effect the appointment of an eligible whose working test period was terminated by a layoff; or 5. for other good cause. Further, *N.J.A.C.* 4A:4-4.9(a)1 states in relevant part that an eligible shall not be appointed and begin work after the expiration date of the eligible list except when there is limited revival or statutory extension of an employment list, except that no appointment shall be made beyond the statutory extension date.

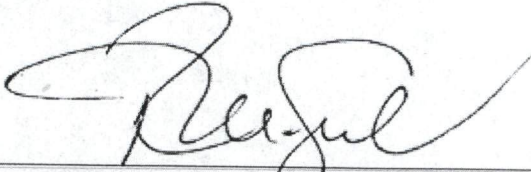
In the instant matter, the parties have reached a settlement concerning M.D.'s eligibility for appointment as a Police Officer. The policy of the judicial system strongly favors settlement. *See Nolan v. Lee Ho*, 120 N.J. 465 (1990); *Honeywell v. Bubb*, 130 N.J. Super. 130 (App. Div. 1974); *Jannarone v. W.T. Co.*, 65 N.J. Super. 472 (App. Div. 1961), *cert. denied*, 35 N.J. 61 (1961). This policy is equally applicable in the administrative area. A settlement will be set aside only where there is fraud or other compelling circumstances. *See Nolan, supra*. A review of the Agreement finds no such compelling circumstance exist. Moreover, in light of the fact that the parties have amicably resolved their differences and M.D. was reachable for appointment on the subject eligible list, has successfully demonstrated his psychological fitness for the position, and agrees to a current date of appointment, the Commission finds good cause to revive the Police Officer (S9999R), Town of Morristown, eligible list pursuant to *N.J.A.C.* 4A:4-3.4 and restore M.D.'s name for appointment, effective July 17, 2017, pursuant to *N.J.A.C.* 4A:4-4.9(a)1. Accordingly, the Commission finds a sufficient basis to acknowledge the settlement agreement between the parties.

### ORDER

Therefore, the Commission acknowledges the subject settlement agreement and orders that the Police Officer (S9999R), Town of Morristown, eligible list be revived and M.D. be restored to the April 22, 2016 certification and recorded as appointed effective July 17, 2017.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 21<sup>ST</sup> DAY OF JUNE, 2017



---

Robert M. Czedo, Chairperson  
Civil Service Commission

Inquiries  
and  
Correspondence:

Christopher S. Myers  
Director  
Division of Appeals  
and Regulatory Affairs  
Civil Service Commission  
Written Record Appeals Unit  
P.O. Box 312  
Trenton, New Jersey 08625-0312

Attachment

c: M.D.  
Kara A. MacKenzie, Esq.  
Jillian Barrick  
H. Thomas Clarke, Esq.  
Kelly Glenn  
Records Center